

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TOM WESTERGREEN, RICHARD)	
WHITMORE and NIELSEN)	
BROTHERS, INC.,)	No. 64207-3-I
)	
Appellants,)	DIVISION ONE
)	
v.)	UNPUBLISHED OPINION
)	
WHATCOM COUNTY and THE)	
WASHINGTON STATE DEPARTMENT)	
OF NATURAL RESOURCES,)	
)	
Respondents.)	FILED: June 14, 2010

Spearman, J.—Whatcom County and the Washington Department of Natural Resources executed a Memorandum of Agreement setting forth the procedures they intend to follow if the county exercises its statutory right to request reconveyance of state forest lands in the Lake Whatcom watershed. Claiming a reconveyance would harm their property interests, Tom Westergreen and others asked the trial court to declare the agreement invalid. But because the agreement does not initiate the reconveyance process or even obligate the county to seek a reconveyance, the effect of a future reconveyance is too speculative to determine at this time. Westergreen’s challenge to the agreement is therefore not justiciable, and the trial court properly dismissed the action without prejudice. We affirm.

FACTS

Under RCW 79.22.040, Washington counties must deed certain forest lands obtained through tax foreclosure to the State of Washington, to be held in trust for that county and administered as other state forest lands. The Washington State Department of Natural Resources (DNR) administers these trust properties.¹ The DNR currently manages 15,700 acres of trust lands in the Lake Whatcom watershed, 8,470 acres of which Whatcom County deeded to the State. The watershed also contains urban residential areas and private forest land.

In limited circumstances, a county may request reconveyance of its state forest lands for use as public parks:

Whenever the board of county commissioners of any county shall determine that state forest lands, that were acquired from such county by the state pursuant to RCW 79.22.040 and that are under the administration of the department, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board for the transfer of such state forest lands.^[2]

After a county requests reconveyance, the DNR, through the Board of Natural Resources, provides notice of the request. Following review, if it determines the proposed park is in accordance with the state outdoor recreation plan, the DNR “shall” reconvey the state forest land to the requesting county.³ The DNR may

¹ See generally Chuckanut Conservancy v. Wash. State Dep’t of Natural Res., No. 62707-4-I, 2010 WL 2044529 (Wash. Ct. App. May 24, 2010).

²RCW 79.22.300.

³ Id.

place conditions on the reconveyance “to allow the department to coordinate the management of any adjacent public lands with the proposed park activity to encourage maximum multiple use management and may reserve rights-of-way needed to manage other public lands in the area.”⁴

In 2008, Whatcom County and the DNR executed a Memorandum of Agreement (MOA) that outlined future plans for the reconveyance of state forest lands in the Lake Whatcom watershed:

The County and DNR seek by this proposed transaction to resolve long-standing questions regarding the management of state trust lands in the watershed in a manner that serves the best interests of both local and state residents, including the beneficiaries of state trust lands. This objective builds upon unique circumstances present in the watershed, in which a large block of state-owned trust forest land is situated very near a major metropolitan area. The County and DNR intend to use this MOA to facilitate a well-coordinated and predictable process to accomplish this stated objective.

Among other things, the MOA sets forth the background history and current status of the state trust lands in the Lake Whatcom watershed, outlines the statutory steps and management considerations necessary to implement a reconveyance, and proposes a possible timeline for the process. Whatcom County has not yet requested a reconveyance.⁵

On December 22, 2008, plaintiffs Tom Westergreen, Richard Whitmore, and Nielsen Brothers, Inc., filed a complaint against Whatcom County and the

⁴ Id.

⁵ The MOA recognizes that a reconveyance will require the expenditure of funds and notes that the parties will execute an Interagency Agreement to hire a staff person to assist with a reconveyance. But the MOA does not mandate any particular expenditures and any agreements imposing or specifying costs were not before the trial court at the time of its decision.

DNR for declaratory and injunctive relief. The plaintiffs alleged that they work in the timber industry and that the reconveyance would eliminate their ability to harvest timber on trust lands, reduce their ability to log private property adjoining trust lands, and reduce private property values. The plaintiffs (hereafter referred to collectively as Westergreen) requested a judgment declaring the MOA invalid and requiring Whatcom County to seek rescission of the agreement.

Whatcom County and the DNR filed a joint motion for summary judgment, arguing that Westergreen's challenge was not ripe for review because the MOA merely provided a framework for any future reconveyance and did not itself undertake or mandate any action. The trial court granted the motion and dismissed Westergreen's action without prejudice. The court concluded that the action was not ripe for review "because the Memorandum of Agreement merely establishes options and considerations in the event of future action." The court noted that Westergreen could refile the challenge once specific actions occurred that resulted in some harm. The court denied Westergreen's motion for reconsideration.

DECISION

Westergreen contends that the trial court erred in dismissing the request for declaratory relief. Westergreen argues that the validity of the MOA presents a justiciable controversy and that, in any event, the issue is one of major public importance warranting review.

When reviewing summary judgment, an appellate court engages in the

same inquiry as the trial court. We consider all facts and reasonable inferences in a light most favorable to the nonmoving party and review all questions of law de novo.⁶

Under the Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW, a person whose rights are affected by a statute or contract may ask the court to determine “any question of construction ... arising under the instrument ... and obtain a declaration of rights ... or other legal relations thereunder.”⁷ But before a court will act under the UDJA, the plaintiff must demonstrate the existence of a justiciable controversy.⁸

A controversy is justiciable if there is:

“(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.”^[9]

Unless these requirements are established, the court “steps into the prohibited area of advisory opinions.”¹⁰ The concept of ripeness is inherent in the requirements for justiciability.¹¹

⁶ Coppernoll v. Reed, 155 Wn.2d 290, 296, 119 P.3d 318 (2005).

⁷ RCW 7.24.020.

⁸ See Bloome v. Haverly, 154 Wn. App. 129, 140, 225 P.3d 330 (2010).

⁹ To-Ro Trade Shows v. Collins, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (alteration in original) (quoting Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).

¹⁰ Walker v. Munro, 124 Wn.2d 402, 411-12, 879 P.2d 920 (1994) (quoting Diversified Indus. Dev. Corp., 82 Wn.2d at 815).

¹¹ To-Ro, 144 Wn.2d at 411 (“traditional limiting doctrines of standing, mootness, and ripeness” inhere in justiciability requirements).

Here, Westergreen failed to demonstrate an actual, present dispute or the mature seeds of one. Westergreen alleges that the MOA has mandated a reconveyance of Whatcom County forest lands, thereby reducing Westergreen's ability to harvest timber and adversely affecting the value of private property.

But contrary to these assertions, the MOA does not require or even initiate a reconveyance. Rather, the agreement identifies the general goals and practical considerations of a reconveyance, the statutory requirements, and the public processes that the parties intend to follow if Whatcom County requests a reconveyance. Westergreen makes no showing that the MOA obligates either party to undertake any action inconsistent with the statutory and regulatory provisions governing reconveyance.¹² Consequently, nothing would prevent the parties from carrying out the steps outlined in the MOA even if a court were to declare the MOA invalid or the parties rescinded the agreement.

Critical to Westergreen's claim of financial injury is the identity of the precise parcels that would be included in any reconveyance. The MOA expressly notes that it involves "preliminary ideas only, and both size and precise boundaries for the final re-conveyance should not be inferred." The parties also recognized that to be feasible, a reconveyance would require a rearrangement of state forest lands and other state trust lands

¹² Westergreen alleges that the MOA is invalid because it was executed without a review under chapter 43.21C RCW, the State Environmental Policy Act, and because it calls for the reconveyance of property that never belonged to Whatcom County or that is not properly zoned for park use. Because Westergreen fails to support these contentions with any legal argument or citation to relevant authority, we decline to consider them. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

into more contiguous blocks prior to re-conveyance, to provide more manageable areas for each, to increase compatibility of future management of the respective ownerships, to reduce transaction costs, and to position the future park lands and working forests on the most appropriate landscape features.¹³

The DNR has authority to facilitate such rearrangements through inter-grant exchanges of trust lands. But that process is governed by statutory and common-law requirements that are independent of the MOA and necessarily involves entities that are not parties to the MOA.¹⁴ The final selection of parcels for reconveyance is therefore contingent on the results of the inter-grant exchanges, a process that has not yet occurred.

A court will refuse to find a justiciable controversy “where the event at issue has not yet occurred or remains a matter of speculation.”¹⁵ Any determination of whether or to what extent a reconveyance would affect Westergreen’s property interests is highly speculative at this time because it depends on a series of actions that have not yet occurred and that may never occur.¹⁶ Whatcom County may or may not request the reconveyance. The DNR may or may not approve the application and may or may not impose conditions on the reconveyance that will affect Westergreen’s property interests. The selection of the specific trust lands to include in a reconveyance must also await further actions.

¹³ Emphasis added.

¹⁴ See ch. 79.17 RCW.

¹⁵ To-Go, 144 Wn.2d at 416.

¹⁶ Westergreen claims that the execution of the MOA itself adversely affected Westergreen’s property interests, but failed to submit any admissible evidence to support this conclusory allegation.

Under the circumstances, Westergreen's challenge to the MOA does not present an actual, present dispute or the mature seeds of one. Because Westergreen failed to demonstrate that its current challenge to the MOA is justiciable, the trial court properly dismissed the action as premature.

Westergreen contends that even if no justiciable controversy exists, the court should still consider the declaratory judgment action because the validity of the MOA presents an issue of major public importance.¹⁷ Westergreen maintains that "plaintiffs and other citizens of Whatcom County need to know whether 8,470 acres of DNR timberlands are going to be converted to a county park." But Westergreen's challenge to the MOA would not resolve this issue.

In determining whether an issue of public importance is sufficient to overcome a justiciability requirement, courts look to the public interest of the subject matter "and the extent to which public interest would be enhanced by reviewing the case."¹⁸ For the reasons set forth above, the MOA addresses only the general procedural framework that the parties intend to follow if Whatcom County requests a reconveyance. The agreement does not require Whatcom County to request a reconveyance, and it imposes no legal obligation on the DNR to grant the request. Nor does the MOA identify the specific parcels that must be included in any future reconveyance. Even if a court declared the MOA invalid, nothing would prevent Whatcom County from exercising its statutory

¹⁷ See Kitsap County v. Smith, 143 Wn. App. 893, 902-03, 180 P.3d 834 (2008) (absent issues of major public importance, a justiciable controversy must exist before a court may invoke its jurisdiction under the UDJA).

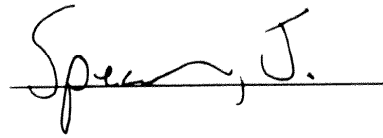
¹⁸ Snohomish County v. Anderson, 124 Wn.2d 834, 841, 881 P.2d 240 (1994).

right to request reconveyance under RCW 79.22.300.

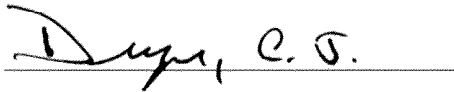
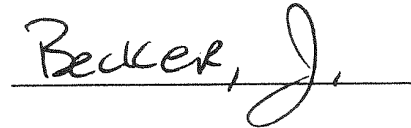
Consequently, legal review of the MOA at this time would not determine whether Whatcom County forest lands would eventually be converted to a public park or specify which parcels could be included in any reconveyance.

Accordingly, Westergreen's challenge to the MOA does not present an issue of major public importance.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Dwyer, C. S.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Becker, J.", written over a horizontal line.